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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,221	11/28/2001	Michael A. Whitby	006593-1908	2780

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THOMPSON HINE LLP
2000 COURTHOUSE PLAZA N.E.
10 WEST SECOND STREET
DAYTON, OH 45402-1758

EXAMINER

HUYNH, LOUIS K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/996,221

Applicant(s)

WHITBY ET AL.

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13, 18, 19, 21, 23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13, 18, 19, 21, 23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, (a) the conveying system comprising a first conveyor and a second conveyor wherein the output end of the first conveyor and the input end of the second conveyor are simultaneously moved by the same actuator (claims 3 & 28); and (b) a separate elevator position adjacent the output end of a substantially horizontal conveyor wherein the elevator is laterally adjustable, sensor for detecting lateral position of the package on the elevator and controller for receiving signal from the sensor to control selective lateral adjustment of the elevator (claim 23) must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3 and 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 (depending on claim 1) requires that the actuator be associated with the input end of the second conveyor while connected to the output end of the first conveyor which lacks

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proper antecedent basis in the specification. Furthermore, "being associated" does not clearly define the structural/functional relationships between the actuator and the input end of the second conveyor.

Claim 28 (depending on claim 1) requires that the actuator be connected for moving both the output end of the first conveyor and the input end of the second conveyor which lacks proper antecedent basis in the specification. Furthermore, it is unclear as to the lateral position of the trayed food package at the output end of the second conveyor since both the output end of the first conveyor and the input end of the second conveyor are simultaneously moved by the same actuator.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5 and 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitby'787 (US 5,144,787) in view of Remensperger (US 3,915,282).

With respect to claims 1 and 12, Whitby'787 discloses a packaging system for wrapping a trayed food product (102) including: an infeed station (104), a wrapping station (106); a film dispensing station (112); and an infeed conveyor (110). The packaging system of Whitby'787 meets all of applicant's claimed subject matter but lacks the specific teaching of a second conveyor, a sensor for sensing lateral position of the package, an actuator for controlling a

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relative position of the output end of the first conveyor to the input end of the second conveyor, and a controller for receiving signals from the sensor and for controlling the actuator.

However, Remensperger discloses a system for conveying and centering articles (10) including: an intermediated conveyor (16), an actuator (38) for controlling a relative lateral position of the intermediate conveyor (16), an array of optical sensors (62, 64) for sensing lateral position of the article, and a controller (78) for receiving signals from the sensors and for controlling the actuator (38) so as to adjust the lateral position of the article prior to transferring the article to a receiving conveyor (18) (column 2, lines 33-42).

Since the packaging system of Whitby'787 requires the package to be laterally centered on the elevator platform (118); therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the packaging system of Whitby'787 by having provided an intermediate conveyor, sensors for sensing lateral position of the package, an actuator for controlling the lateral position of the second conveyor, and a controller for receiving the signals from the sensors and for controlling the actuator, as taught by Remensperger, in order to automatically laterally center the package prior to transferring the package to the wrapping station.

Regarding the limitation of the output end of the first conveyor being aligned at a height with the input end of the second conveyor as required in claims 1 and 12, it would have been obvious to the skilled person in the art to align the output end of the intermediate conveyor with the input end of the current conveyor.

Regarding the limitation of the actuator for controlling the relative lateral position of the output end of the first conveyor as required in claim 1, since the exact location of the conveyor

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for adjusting the lateral position of the trayed food product does not solve any stated problem; therefore, it would have been obvious to the skilled person in the art to have provided the intermediate conveying system of Remensperger as the first conveyor upstream of the fixed conveyor.

With respect to claims 2, 11 and 13, in the modified packaging system of Whitby'787, the intermediate conveyor of Remensperger could be positioned upstream of the infeed conveyor (110) as the first conveyor, and the actuator (38) would have associated with both the input end and the output end of the first conveyor.

With respect to claim 3, as best understood, in the modified packaging system of Whitby'787, the intermediate conveyor of Remensperger could be positioned downstream of the infeed conveyor (110) as the second conveyor, and the actuator (38) would have associated with both the input end and the output end of the second conveyor.

With respect to claim 4, the modified packaging system of Whitby'787 would have included an array of optical sensors (62, 64) for sensing the lateral position of the trayed food package, as taught by Remensperger.

With respect to claim 5, the exact location of the sensors is obvious to the skilled person in the art as a matter of engineering design choice since various types of optical sensors suitable for sensing positions are available in the art and thus does not patentably distinguish the claimed invention over the applied prior art.

With respect to claims 7 and 8, the exact location of the wrapping material with respect to the second conveyor and the desired location of the trayed food product with respect to the

wrapping material are obvious to the skilled person in the art as a matter of engineering design choice, and thus does not patentably distinguish the claimed invention over the applied prior art.

With respect to claim 9, the film dispensing station (112) would have been above the wrap station (106) in the modified packaging system of Whitby'787.

With respect to claim 10, the wrap station (106) in the modified packaging system of Whitby'787 would have included an elevator (118) that is vertically movable.

7. Claims 18, 19, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitby'787 (US 5,144,787) in view of Remensperger (US 3,915,282) and further in view of Gotthardt et al. (1.808,134).

Whitby'787 discloses a packaging system for wrapping a package (102) including: an infeed station (104), a wrapping station (106); a film dispensing station (112); and an infeed conveyor (110). The packaging system of Whitby'787 meets all of applicant's claimed subject matter but lacks the specific teaching of a second conveyor, a sensor for sensing lateral position of the package, an actuator for controlling a relative position of the output end of the first conveyor to the input end of the second conveyor, and a controller for receiving signals from the sensor and for controlling the actuator.

However, Remensperger discloses a system for conveying and centering articles (10) including: an intermediated conveyor (16), an actuator (38) for controlling a relative lateral position of the intermediate conveyor (16), an array of optical sensors (62, 64) for sensing lateral position of the article, and a controller (78) for receiving signals from the sensors and for

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controlling the actuator (38) so as to adjust the lateral position of the article prior to transferring the article to a receiving conveyor (18) (column 2, lines 33-42).

Since the packaging system of Whitby'787 requires the package to be laterally centered on the elevator platform (118); therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the packaging system of Whitby'787 by having provided an intermediate conveyor, sensors for sensing lateral position of the package, an actuator for controlling the lateral position of the second conveyor, and a controller for receiving the signals from the sensors and for controlling the actuator, as taught by Remensperger, in order to automatically laterally center the package prior to transferring the package to the wrapping station.

The modified packaging system of Whitby'787 meets all of applicant's claimed subject matter but lacks the specific teaching of the conveying system including an actuator connected for moving an output end of a first conveyor while an input end of the first conveyor remain laterally stationary.

However, Gotthardt discloses a well known conveying system including a main conveyor having an input end (10) and an output end (14), and an actuator (35) connected for laterally moving the output end (14) while the input end of the conveyor remain laterally stationary in order to laterally position an article on the main conveyor onto a particular branch conveyor.

It would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have further modified the packaging system of Whitby'787 by having provided the conveyor system of Gotthardt as the first conveyor so that the packages can be conveyed on the first conveyor from the input end and laterally positioned at the output end.

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8. Claims 21 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitby'787 (US 5,144,787) in view of Remensperger (US 3,915,282) as applied to claims 1 and 13 above; and further in view of Gotthardt et al. (1.808,134).

The modified packaging system of Whitby'787 meets all of applicant's claimed subject matter but lacks the specific teaching of the conveying system including an actuator connected for moving an output end of a first conveyor while an input end of the first conveyor remain laterally stationary.

However, Gotthardt discloses a well known conveying system including a main conveyor having an input end (10), an intermediate section (15) and an output end (14); and an actuator (35) connected for laterally moving the output end (14) while the input end of the conveyor remain laterally stationary in order to laterally position an article on the main conveyor onto a particular branch conveyor.

It would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have further modified the packaging system of Whitby'787 by having provided the conveyor system of Gotthardt as the first conveyor so that the packages can be conveyed on the first conveyor from the input end and laterally positioned at the output end.

With respect to claims 27-30, the arrangement of the conveyor is obvious to the skilled person in the art as a matter of engineering design choice since it does not solve any stated problem insofar as the record is concerned; therefore, the movable end of the conveying system of Gotthardt could be arranged either upstream as the output end of the first conveyor or downstream as the input end of the second conveyor.

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9. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitby'787 (US 5,144,787) in view of Remensperger (US 3,915,282) and further in view of Boeckmann (US 4,716,706).

Whitby'787 discloses a packaging system for wrapping a package (102) including: an infeed station (104), a wrapping station (106); a film dispensing station (112); and a conveying system including a substantially horizontal conveyor (110) and an elevator (118), which meets most of applicant's claimed subject matter but lacks the specific teaching of a sensor for sensing lateral position of the package, and a controller for receiving signals from the sensor to control selective lateral adjustment of the conveying system.

However, Remensperger discloses a system for conveying and centering articles (10) including: a conveyor (16), an array of optical sensors (62, 64) for sensing lateral position of the article, and a controller (78) for receiving signals from the sensors to control the conveyor so as to adjust the lateral position of the article (column 2, lines 33-42).

Since the packaging system of Whitby'787 requires the package to be laterally centered with respect to the wrapping material, the lateral position of the package must be known and adjusted; therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the packaging system of Whitby'787 by having provided sensors for sensing lateral position of the package, and a controller for receiving the signals from the sensors and for controlling the conveyor system, as taught by Remensperger, in order to enable the lateral adjustment of the package with respect to the wrapping material.

The modified packaging system of Whitby'787 meets all of applicant's claimed subject matter but lacks the specific teaching of the elevator being laterally adjustable.

However, Boeckmann discloses a lift table (40) that is laterally displaceable so that the container (54) is positioned in a desired position relative to the product (bag chain 11) being deposited.

Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have further modified the packaging system of Whitby'787 by having provided an elevator that is laterally adjustable, as taught by Boeckmann, so that the controller of the modified packaging system could laterally adjust the elevator in order to correctly position the package with respect to the wrapping material.

Response to Arguments

10. Applicant's arguments filed July 03, 2003 have been fully considered but they are not persuasive.

With respect to claims 1 and 12, applicant contends that Whitby'787 (US 5,144,787) and Remensperger (US 3,915,282) do not disclose and/or suggest an arrangement of the conveyors in which the output end of the first conveyor is aligned with the input end of the second conveyor; and that the sensors of Remensperger when combining with the packaging system of Whitby'787 would interfere with the trayed food product being conveyed. This is not found persuasive because the packaging system Whitby'787 requires the package to be correctly positioned and the reference to Remensperger teaches that lateral position of conveyed articles can be sensed and laterally adjusted by segmented conveying system; therefore it would have been obvious to a skilled person in the art to modified the packaging system of Whitby'787 using the teaching of Remensperger. Furthermore, the skilled person in the art would have known how to combine the teaching of the references so that the combination would have worked as expected; i.e. the output

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end of the laterally adjustable conveyor would have been aligned with the input end of the fixed conveyor so that trayed food products would not be turned over, and the sensors would have been selected and arranged to sense the lateral position of the trayed food products in such a way that they would not interfere with trayed food products.

Applicant's arguments with respect to claims 18, 23, 25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

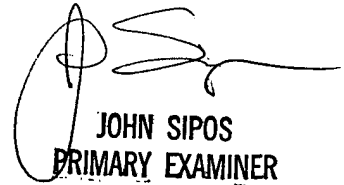
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

LH
September 12, 2003



JOHN SIPOS
PRIMARY EXAMINER